

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

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Refer Reply To:

CC:PSI:B01

PLR-147184-10

Date:

April 28, 2011

LEGEND

X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State 1 =

State 2 =

Dear :

This responds to a letter dated November 5, 2010, and subsequent correspondence, requesting a ruling under § 1362(g) of the Internal Revenue Code and requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations.

FACTS

According to the information submitted, X was incorporated on Date 1 under the laws of State 1. Y was incorporated on Date 2 under the laws of State 2. Y filed Form 2553, Election by a Small Business Corporation, to be classified as a Subchapter S Corporation effective Date 3. On Date 4, X, an ineligible shareholder, acquired all of the Stock of Y, thereby terminating Y's S status. X filed Form 2553, Election by a Small Business Corporation, electing to be classified as a subchapter S corporation effective Date 5.

X requests consent to file a Form 8869, Qualified Subchapter S Subsidiary (QSub) Election, on behalf of Y, effective Date 5. Date 5 is prior to the five-year waiting period after Y's S corporation status terminated, as imposed by § 1362(g).

LAW AND ANALYSIS

Section 1361(a) provides that an S corporation is a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b)(1) provides that the terms "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362(a), to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(g) provides that, if a small business corporation has made an election under § 1362(a) and if such election has been terminated under § 1362(d), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

Section 1.1362-5(a) of the Income Tax Regulations provides that the corporation has the burden of establishing that under the relevant facts and circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of

the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination will tend to establish that consent should be granted. In the absence of this fact, consent ordinarily is denied unless the corporation shows that the event causing termination was not reasonably within the control of the corporation or the shareholders having a substantial interest in the corporation and was not part of a plan of the corporation or of such shareholders to terminate the election.

Section 1361(b)(3)(A) generally provides that a QSub shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) provides that the term QSub means a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is held by an S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a) prescribes the time and manner for making an election to be classified as a QSub. Section 1.1361-3(a)(4) provides that an election may be effective up to two months and 15 days prior to the date the election is filed or not more than 12 months after the election is filed. The proper form for making the election is Form 8869, Qualified Subchapter S Subsidiary Election.

Section 1361-3(a)(6) provides that an extension of time to make a QSub election may be available under the procedures applicable under §§ 301.9100-1 and 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3, to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 sets forth the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that Y has met its burden under § 1.1362-5(a). Further, based solely on the fact submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied.

As a result, X is granted an extension of time of 120 days from the date of this letter to elect to treat Y as a QSub effective Date 5. The election should be made by filing Form 8869 with the appropriate service center. A copy of this letter should be attached to the election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning whether X is a valid S corporation or whether Y is eligible to be a QSub.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being mailed to your authorized representative.

Sincerely,

Barbara J. Campbell
Barbara J. Campbell
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes